

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. M-07/10-316
)
Appeal of)

INTRODUCTION

The petitioner appeals the "decision" (see *infra*) by the Department for Children and Families, Economic Services denying his application for General Assistance (GA) on an "expedited" basis to pay for an "uninterruptible power source (UPS)" for a breathing assistance device he uses at night. The Department of Vermont Health Access (DVHA, formerly OVHA) is currently considering a request by the petitioner's doctor for an exception under regulation § 7104 (formerly M108) for Medicaid coverage for a UPS. The issue at this time is whether the petitioner has an *immediate emergency* medical need for the UPS under either § 7104 or the pertinent General Assistance (GA) regulations. The following findings are based on the parties' representations at a hearing in the matter held on July 15, 2010.

FINDINGS OF FACT

1. On July 1, 2010 DVHA received separate requests from the petitioner's treating physician and a nurse practitioner for an exception under § 7104 of the Medicaid regulations for a "UPS". The bases of these requests were set out as follows on the "medical need form" submitted by the nurse:

[Petitioner] was previously diagnosed with Obstructive Sleep Apnea (OSA). This diagnosis was confirmed through a sleep study at Dartmouth-Hitchcock Medical Center. He was placed on BiPap therapy. BiPap is a proven and effective treatment for OSA and [petitioner] reports he receives benefit from consistent use of BiPap.

[Petitioner] was seen in my clinic at Fletcher Allen Health Care on May 20, 2010 for follow-up. At this time [petitioner] stated that he has not been able to obtain consistent benefit from his BiPap therapy owing to frequent power outages at his home. He states that his utility supplier - Green Mountain Power - has multiple power interruptions to his home service each week. When this occurs at night and the unit loses power, [petitioner] awakens gasping for air.

He is requesting that Medicaid provide coverage for him to obtain an uninterruptible power supply (UPS) to provide short-term power to his Bi-Pap machine when he loses local utility service. . .

As reported by [petitioner], the frequent power interruptions at his home at night prevent the consistent use of the BiPap machine. As noted, BiPap is a proven and effective therapy but it also must be used consistently for a patient to derive maximal benefit. Frequent power interruptions will certainly disrupt consistency of use and will detract from [petitioner's] health benefit of consistent Bi-Pap use.

I therefore support his request for a UPS device to provide power to his BiPap machine during the reported periods of local utility outage.

2. The petitioner requested a fair hearing on July 7, 2010. At the hearing held on July 15, 2010 the Department represented that it had not yet made a decision regarding the providers' § 7104 requests. The petitioner demanded "expedited" relief because he feels his life is in danger unless he *immediately* obtains a UPS to power his BiPap machine. Other than the above-cited statement from his providers that accompanied their § 7104 requests, and some articles the petitioner had downloaded from the internet, the petitioner submitted no medical evidence regarding the urgency of his providers' requests.

3. As of the date of the hearing the petitioner had not formally applied for General Assistance (GA) on an emergency basis to purchase a UPS. However, the hearing officer informed the parties that he would rule on whether the medical evidence submitted in the case required the Board's consideration of the matter on an "expedited" basis.

ORDER

The petitioner's request for expedited relief is denied.

REASONS

The General Assistance regulations provide that households with income in excess of the Reach Up Financial Assistance (RUFA) maximum can only receive additional financial assistance if they are experiencing a "catastrophic situation". See W.A.M. § 2600 *et seq.* There is no dispute in this matter the petitioner's income from SSI, though certainly limited, is in excess of the RUFA payment level for a household of his size. W.A.M. §§ 2244-2249.

The GA regulations define catastrophic situations as an *emergency* medical need. W.A.M. § 2623. As noted above, other than his own fears and the experiences of some others as reported on the internet, there is no indication *from his medical providers* that the petitioner has an *emergency* medical need for a UPS.

Under the regulations, the Department generally has 30 days to make a decision regarding prior approval of Medicaid coverage. See W.A.M. § 7102.4. At the hearing, which was held 14 days after it received the request for coverage, the Department represented that its decision was imminent. If that decision is unfavorable to the petitioner he is free to file an appeal. At this time, however, it cannot be concluded that either the regulations or the medical evidence

requires the Department (or the Board) to proceed with greater dispatch.

The Board has recognized (including in a case involving this petitioner, see Fair Hearing No. M-09/09-492) that what constitutes a defined "emergency" under the regulations can differ from the perceived needs of the individual requesting assistance. (See also, Fair Hearing No. M-07-08-318.) However, inasmuch as the petitioner in this matter has not demonstrated that his alleged needs and grievances are within the definition or contemplation of the emergency aspects of the GA or any other Department program, the Board has no bases to provide emergency relief. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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